

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS AFSCME District Council 47 H&W Fund, Philadelphia
Firefighters Union Local 22 H&W Fund and National
Council of Firemen and Oilers Local 1201 H&W Fund

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Stewart L. Cohen, Esquire
Cohen, Placitella & Roth, P.C.
2001 Market Street - Suite 2900
Philadelphia, PA 19103 - 215-567-3500

DEFENDANTS

Purdue Pharma, L.P. and The Purdue Frederick Company, Inc.

County of Residence of First Listed Defendant Fairfield
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input checked="" type="checkbox"/> 385 Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332

Brief description of cause: Claim for costs from overpromotion of Oxycontin

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 5/14/07 SIGNATURE OF ATTORNEY OF RECORD Stewart L. Cohen

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

AFSCME District Council 47 H&W Fund, Philadelphia
Firefighters Union Local 22 H&W Fund and National
Council of Firemen and Oilers Local 1201 H&W Fund

v.

Purdue Pharma, L.P. and The Purdue Frederick Company, Inc.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

5/14/07	William D. Marvin	Plaintiff
Date	Attorney-at-law	Attorney for
215-567-3500	215-567-6019	wmarvin@cpirlaw.com
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
DISTRICT COUNCIL 47 HEALTH AND
WELFARE FUND
1606 Walnut St.
Philadelphia, PA 19103

CIVIL ACTION

No.

and

PHILADELPHIA FIREFIGHTERS UNION
LOCAL NO. 22 HEALTH & WELFARE FUND
415-427 North 5th Street
Philadelphia, PA 19123

and

NATIONAL COUNCIL OF FIREMEN AND
OILERS, LOCAL 1201 HEALTH AND
WELFARE FUND
455 North 5th Street
Philadelphia, PA 19123

v.

PURDUE PHARMA L.P.
One Stamford Forum
201 Tresser Blvd.
Stamford, CT 06901-3431

and

THE PURDUE FREDERICK COMPANY INC.
One Stamford Forum
201 Tresser Blvd.
Stamford, CT 06901-3431

COMPLAINT - CLASS ACTION
Jury Trial Demanded

IDENTIFICATION OF PARTIES

1. The American Federation of State, County and Municipal Employees, District Council 47 Health and Welfare Fund ["District Council 47 Fund"] is a health and welfare trust fund having an office and place of business at 1606 Walnut Street, Philadelphia, PA 19103.

2. The Philadelphia Firefighters Union Local No. 22 Health and Welfare Fund ["Local 22 Fund"] is a health and welfare trust fund having an office and place of business at 415-427 North 5th Street, Philadelphia, PA 19123.

3. The National Council of Firemen and Oilers Local 1201 Health and Welfare Fund ["Local 1201 Fund"], is a health and welfare trust fund having an office and place of business at 455 North 5th Street, Philadelphia, PA 19123.

4. Defendant Purdue Pharma L.P., is a business entity in the form of a privately held limited partnership, that maintains offices and its principal place of busienss at One Stamford Forum, 201 Tresser Blvd., Stamford, CT 06901-3431.

5. Defendant The Purdue Frederick Company, Inc., is a business corporation organized under the laws of the state of New York, that maintains offices and its principal place of busienss at One Stamford Forum, 201 Tresser Blvd., Stamford, CT 06901-3431. On information and belief, defendant Purdue

Frederick is the general partner of defendant Purdue Pharma, LP. Defendants acted jointly in all the matters alleged herein, and are collectively referred to as "Purdue."

6. Defendants regularly conduct business within the Commonwealth of Pennsylvania and the Eastern District of Pennsylvania, but are not citizens of the Commonwealth of Pennsylvania.

7. The acts and omissions of each Defendant, as set forth herein, were committed by its agents, officers and employees, acting within the course and scope of their office, employment or agency.

JURISDICTION

8. This Court has subject matter jurisdiction of this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), in that there is diversity of citizenship between the named Plaintiffs and members of the Proposed Class and Defendants, and the aggregate amount in controversy exceeds \$5 million.

9. Venue is proper in this district in that each Defendant is subject to personal jurisdiction in this district because of its regular business activities within this district.

COMMON FACTS

10. The claims in this action arise from the defendants' marketing and promotion of OxyContin, a controlled-release form of a Schedule II narcotic drug manufactured by defendant Purdue Pharma L.P. Purdue began selling Oxycontin in 1995, for the treatment of moderate-to-severe pain lasting more than a few days.

11. The District Council 47 Fund provides various benefits for employees of the City of Philadelphia who are affiliated with the American Federation of State, County and Municipal Employees, District Council 47, including the dependents of their members, as well as retired employees and their dependents.

12. The Local 1201 Fund provides various benefits for employees of the School District of Philadelphia, who are members of the National Council of Firemen and Oilers, Local 1201, including the dependents of their members, as well as retired members and their dependents.

13. The Local 22 Fund provides various benefits for employees of the Philadelphia Fire Department who are members of the International Association of Firefighters Union Local No. 22, including the dependents of their members, as well as retired members and their dependents.

14. The benefits provided by each of the Plaintiff Funds include prescription drug benefit plans and coverage, which are self-insured by the respective Funds and administered through a Prescription Benefit Manager ["PBM"]. The Funds also provide coverage for medical benefit plans.

15. During the relevant time period, the Funds purchased Oxycontin for use by their members or retirees, and/or reimbursed members or retirees for their purchases of OxyContin. The Funds were injured as a result of the unlawful conduct alleged herein, which cause unnecessary and excessive usage of OxyContin.

16. The Funds' plans only permit payment for prescriptions which are medically necessary, and in accordance with medically recognized uses. The plans seek to regulate and control the cost of prescription drugs by methods such as use of approved formularies and encouraging use of generic drugs.

17. The Funds and their PBMs rely on persons causing claims to be submitted for payment, to recognize and honor the permissible scope of reimbursement and to obey the governing law and regulations in activities that cause such claims.

18. The Purdue Defendants have aggressively exploited their position, their superior knowledge of their product's characteristics and their knowledge that payors such as

Plaintiffs relied on suppliers and sellers to comply with the governing regulation, by means of direct, illegal programs of promotion of use of non-medically necessary, non-indicated uses.

19. In Pennsylvania, Purdue has marketed Oxycontin, its powerful narcotic medication pain for non-medically necessary uses including use for the treatment of moderate pain. Further, each Defendant has intentionally misrepresented to prescribers who treat Fund participants that Oxycontin had less potential for abuse and addiction than other forms of narcotic medication.

20. From the outset of the OxyContin marketing campaign, Purdue promoted the drug to physicians for noncancer pain conditions that can be caused by arthritis, injuries, and chronic diseases, in addition to cancer pain, and promoted the drug in a manner which increased the potential for abuse and diversion of the medication for improper and illegal purposes.

21. Purdue conducted an extensive campaign to market and promote OxyContin that focused on encouraging physicians, including those in primary care specialties, to prescribe the drug for noncancer as well as cancer pain.

22. Purdue directed its sales representatives to focus on the physicians in their sales territories who were high opioid prescribers.

23. To implement its OxyContin campaign, Purdue significantly increased its sales force and used multiple promotional approaches.

24. OxyContin sales and prescriptions grew rapidly following its market introduction, with the growth in prescriptions for noncancer pain outpacing the growth in prescriptions for cancer pain.

25. The active ingredient in OxyContin tablets is oxycodone, a compound that is similar to morphine and is also found in oxycodone combination pain relief drugs such as Percocet, Percodan, and Tylox.

26. Because of its controlled-release property, OxyContin contains more active ingredient and needs to be taken less often (twice a day) than these other oxycodone-containing drugs. The OxyContin label originally approved by FDA indicated that the controlled-release characteristics of OxyContin were believed to reduce its potential for abuse.

27. Defendants began marketing OxyContin in 10-, 20-, and 40-milligram controlled-release tablets. Purdue later developed higher dosage forms, with 80- and 160-milligram controlled-release tablets, for use by patients who were already taking opioids and had developed tolerance for narcotics.

28. OxyContin sales and prescriptions grew rapidly following its market introduction in 1996. In 1997, OxyContin's sales and prescriptions began increasing significantly, and they continued to increase through 2002. In both 2001 and 2002, OxyContin's sales exceeded \$1 billion, and prescriptions were over 7 million.

29. OxyContin's formulation as a controlled-release opioid that is twice as potent as morphine made it an attractive target for abuse and diversion.

30. The original label's safety warning advising patients not to crush the tablets because of the possible rapid release of a potentially toxic amount of oxycodone had the potential to alert abusers to possible methods for misuse.

31. The rapid growth in OxyContin sales increased the drug's availability in the marketplace and contributed to opportunities to obtain the drug illicitly.

32. Purdue has been cited at least twice by the FDA for OxyContin advertisements in medical journals that violated the FD&C Act.

33. Purdue promoted OxyContin in such manner as to downplay and minimize the potential for addiction and abuse, thus causing the great increase in usage and sales, fueled by

users' addiction and the difficulty of withdrawal from chronic dependence on the narcotic.

34. In particular, Defendants' employees were instructed to and did make misleading and false promotional statements about OxyContin to healthcare professionals that contradicted the FDA-approved prescribing information for OxyContin and the express warnings it contained about risks associated with the medicine, in violation of defendant's purported policies about promotional statements. Generally, these misstatements understated the risks posed by OxyContin of addiction, abuse, withdrawal, and tolerance compared to other pain medications.

CLASS ALLEGATIONS

35. Plaintiffs bring this action as a class action under Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure on behalf of a class of all other Third-Party Payors, on behalf of themselves and their beneficiaries or insureds, where the Funds have offices in, or pay for prescriptions for patients within the Commonwealth of Pennsylvania (excluding Defendants and Defendants' respective subsidiaries and affiliates) who, from a point in time to be determined in accordance with further proceedings in this matter, and continuing through the present, have purchased, or reimbursed their beneficiaries/insureds for

excessive, unnecessary, abusive, or diverted purchases of OxyContin (the "Class").

36. With as many as 7 million prescriptions per year, every insurance carrier that provides prescription coverage and many other Third-Party Payors, which together exceed a thousand entities, covered the purchases of the medication by their insureds and beneficiaries. This action is brought as a class action because joinder of the members of the Class is impracticable. Plaintiffs therefore bring this action on their own behalf and as representatives of the Class.

37. All putative Class members were and are similarly affected by having purchased and reimbursed for purchases of OxyContin and the relief sought herein is for the benefit of Plaintiffs and members of the putative Class. Common questions of law or fact predominate over any questions that may affect only individual members. Questions of law or fact common to the Class include:

a. whether Purdue misrepresented and understated the dangers of abuse and addiction from OxyContin;

b. whether Purdue's actions in promoting OxyContin violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law;

c. whether Pursue was unjustly enriched as a consequence of unfair and unjust acts;

d. whether Purdue breached implied warranties in connection with the sale of OxyContin;

e. whether Plaintiffs and members of the Class are entitled to restitution and/or rescission for the costs and expenses in connection with any purchases, reimbursements or other costs related to their purchases and reimbursements of OxyContin;

f. whether Purdue's liability for its marketing of OxyContin is limited by legal defenses which would apply to all claims, such as federal preemption;

g. whether Plaintiffs and members of the Class are entitled to actual and compensatory damages related to their purchases and reimbursements for purchases of OxyContin.

38. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs seek no relief which is antagonistic to the interests of the Class. In addition, Plaintiffs are represented by counsel who are competent and experienced in the prosecution of class actions.

39. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a

large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practicable to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

40. Plaintiffs' claims are not only typical of, but also are coextensive with, the claims of the class members. Plaintiffs and all members of the class sustained damages in the same manner as a result of Defendants' wrongful conduct.

41. Plaintiffs have an agreement with undersigned counsel that provides for counsel to advance all reasonable and necessary costs to litigate this action contingent on the success of the action.

COUNT I
PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW

42. Plaintiffs incorporate the foregoing paragraphs by reference.

43. At all relevant times there was in effect the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa. Cons. Stat. § 201-1 *et seq.* ("UTPCPL").

44. The Funds and other class members purchased OxyContin on behalf of their members or retirees primarily for personal, family or household purposes within the meaning of 73 Pa. C.S.A. § 201-9.2.

45. Section 3 of the UTPCPL, 73 Pa. Cons. Stat. § 201-3, provides, in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as defined by sub clauses (i) through (xxi) of clause (4) of section 2 of this act . . . are hereby declared unlawful.

46. Section 2 of the UTPCPL, 73 Pa. Cons. Stat. § 201-2, provides, in pertinent part:

"UNFAIR METHODS OF COMPETITION" and "UNFAIR OR DECEPTIVE ACTS OR PRACTICES" mean any one or more of the following:

(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that person has a sponsorship, approval, status, affiliation or connection that he does not have;

* * *

(vii) Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model, if they are of another;

* * *

(xiv) Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made;

* * *

(xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

47. Defendants misrepresented, concealed and/or omitted to inform Plaintiffs and the Class and the physicians who prescribed OxyContin of the adverse health effects which may result from taking its product. The material information Defendants concealed from government agencies, physicians, and Plaintiffs and members of the Class was the dangerous nature of OxyContin in terms of its potential for causing addiction, dependency, and resulting likelihood of abuse and diversion for non-medical use.

48. Said misrepresentations, concealment and/or omissions were likely to deceive and/or in fact caused Plaintiffs and other members of the Class to purchase or reimburse for excessive purchases of OxyContin, particularly from the effects of addiction and dependency.

49. Defendants intended that Plaintiffs and Class members and physicians who prescribed OxyContin rely on their

misrepresentations, concealment and/or omissions as to the description, quality and characteristics of OxyContin and on a belief that OxyContin was beneficial, could be used in large doses and for chronic pain conditions, and had less potential for abuse than other powerful narcotics.

50. Defendants' actions, which were willful and wanton, or at least reckless, constitute violations of the UTPCPL.

51. Plaintiffs and other members of the Class have been damaged as a proximate result of Defendants' violations of the UTPCPL and have suffered actual, ascertainable losses, in that they paid for or reimbursed for purchases of OxyContin through Defendants' violations of the UTPCPL

52. As a direct and proximate result of Defendants' violations of the UTPCPL as set forth above, Plaintiff and the members of the class have suffered an ascertainable loss of money and are therefore entitled to relief, including damages, under CPL § 201-9.2.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

- a. an order certifying this matter as a class action with Plaintiffs as Class representatives and designating Plaintiffs' counsel as Class Counsel;

b. judgment in favor of Plaintiffs and the Class in excess of \$75,000 for violation of the UTPCPL and damages as a result of the excessive purchases of OxyContin;

c. requiring Defendants to pay the reasonable attorneys' fees and costs of Plaintiffs and the Class; and

d. such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court, including treble damages and/or \$100 per violation under the UTPCPL, whichever is greater.

COUNT II
RESCISSION/UNJUST ENRICHMENT

53. Plaintiffs incorporate the foregoing paragraphs by reference.

54. Defendants are the manufactures, sellers, and/or suppliers of the drug, OxyContin.

55. Defendants, through their wrongful conduct described above, have reaped enormous, illgotten profits from the sale of OxyContin. Defendants' profits would have been reduced, but for their wrongful and unlawful conduct.

56. Defendants have plead guilty to a federal criminal charge of misbranding, in connection with their wrongful promotion of OxyContin, and paid a fine of \$470 million, which

only represents a fraction of the profits defendants have realized through the excessive sales of the drug.

57. Accordingly, Defendants have been unjustly enriched by their unlawful and wrongful conduct. Defendants should not be allowed to retain the proceeds from the benefits conferred upon it by Plaintiffs and the Class.

58. In equity and good conscience, it would be unjust and inequitable to permit Defendants to enrich themselves at Plaintiffs' and the Class' expense. Therefore, Defendants must disgorge their unjustly acquired profits and other monetary benefits resulting from their unlawful conduct and provide restitution and/or rescission to Plaintiffs and the Class.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

a. an order certifying this matter as a class action with Plaintiffs as Class representatives and designating Plaintiffs' counsel as Class Counsel;

b. judgment in excess of \$75,000 in favor of Plaintiffs and the Class in the amount of actual and compensatory damages;

c. requiring Defendants to pay the reasonable attorneys' fees and costs of Plaintiffs and the Class; and

d. such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

COUNT III
BREACH OF IMPLIED WARRANTY

59. Plaintiffs incorporate the foregoing paragraphs by reference.

60. Defendants, in the manufacture, marketing and sale of OxyContin impliedly warranted to Plaintiffs and the Class that said drug was fit for its particular ordinary purpose, that being to provide safe and effective treatment for chronic pain, and had lower risk of addiction and abuse.

61. Defendants, their agents and their employees knew or should have known that OxyContin causes negative health effects and/or places persons at risk for negative health effects.

62. Plaintiffs and members of the Class reasonably relied upon the skill and judgment of Defendants as to whether OxyContin was safe and fit for its intended use.

63. Under the Uniform Commercial Code in Pennsylvania, and in other states in which Defendants market and sell their products, there exists an implied warranty of merchantability. See 13 Pa. C.S.A. §§ 2314, 2315.

64. Defendants breached this warranty of merchantability by selling OxyContin as being fit for its ordinary purpose when, in fact, it was not.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

a. an order certifying this matter as a class action with Plaintiffs as Class representatives and designating Plaintiffs' counsel as Class Counsel;

b. judgment in favor of Plaintiffs and the Class in an amount in excess of \$75,000 compensatory and consequential damages;

c. requiring Defendants to pay the reasonable attorneys' fees and costs of Plaintiffs and the Class; and

d. such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

COUNT IV
NEGLIGENCE

65. Plaintiffs incorporate the foregoing paragraphs by reference.

66. Defendants owed the plaintiff Funds a duty to use reasonable care in the marketing of Oxycontin. Specifically, Defendants owed the Plaintiffs a duty not to cause the Funds to

incur the cost of OxyContin for medically unnecessary uses, or for excessive usage caused by wrongful and misleading promotion. Further, Defendants owed the Plaintiffs a duty to accurately disclose known risks associated with their drug.

67. Defendants negligently, carelessly, recklessly, willfully and/or intentionally engaged in the following conduct in violation of its duties:

- a. Marketing and/or promoting OxyContin for off label or non-medically necessary uses;

- b. Improperly training and instructing their sales force to misrepresent the risks and drawbacks of the drug;

- c. Continuing to deceptively promote, market and/or sell the drug well after they knew, or should have known, of the serious side effects and risks associated with the use of their drug; and

- d. Allowing their drug to be used indiscriminately for uses beyond its respective indications.

68. Defendants' negligent, careless, reckless, willful and/or intentional conduct was the proximate cause of injuries and damages sustained by the Funds.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

a. an order certifying this matter as a class action with Plaintiffs as Class representatives and designating Plaintiffs' counsel as Class Counsel;

b. judgment in favor of Plaintiffs and the Class in an amount in excess of \$75,000 compensatory and consequential damages;

c. requiring Defendants to pay the reasonable attorneys' fees and costs of Plaintiffs and the Class; and

d. such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

COUNT V
MISREPRESENTATION UNDER
RESTATEMENT (SECOND) OF TORTS §402B

69. Plaintiffs incorporate the foregoing paragraphs by reference.

70. Defendants, through their advertising, labeling, sales representative contacts with physicians who treat the Funds' participants, and otherwise, have misrepresented material facts about their drug's risks, safety, and appropriateness as a treatment for non-medically necessary uses.

71. The Plaintiffs and physicians treating the Funds' participants justifiably relied upon Defendants' misrepresentations.

72. The Defendants are subject to strict liability for the damages resulting from their misrepresentations about the safety and efficacy of their product, pursuant to Restatement (Second), of Torts § 402B.

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for:

a. an order certifying this matter as a class action with Plaintiffs as Class representatives and designating Plaintiffs' counsel as Class Counsel;

b. judgment in excess of \$75,000 in favor of Plaintiffs and the Class in the amount of actual and compensatory damages;

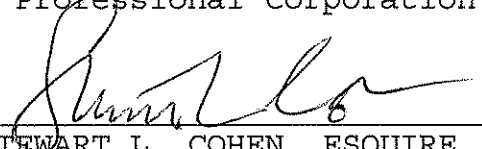
c. requiring Defendants to pay the reasonable attorneys' fees and costs of Plaintiffs and the Class; and

d. such other and further relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

Respectfully submitted,

COHEN, PLACITELLA & ROTH
A Professional Corporation

BY:


STEWART L. COHEN, ESQUIRE
WILLIAM D. MARVIN, ESQUIRE
PETER A. MUHIC, ESQUIRE
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